

Disposition of the Independent Review Panel



Complainant: Jeff Tyler

IRP Cases: A2005.180

Date: April 27, 2006

MDPD Case: IA 2004-0364

The Independent Review Panel met on April 27, 2006 for the purpose of publicly reviewing the complaint made by Jeff Tyler against the Miami-Dade Police Department (MDPD) and the department's response to that complaint. The following represents the findings of the Panel:

A. Recommendations

1. That MDPD provide informal verbal counseling for Officer Orlando Lopez and Sgt. Ernest Jones for providing incorrect information on the Arrest Affidavit.
2. That MDPD Professional Compliance Bureau resend the letters to the involved officers with the correct findings.

B. Incident

While the complainant was at a party at the Vizcaya Museum and Gardens, he witnessed two Miami-Dade Police Department officers "throw out" a young black man. When the complainant intervened, MDPD Officer Gregory Carter, grabbed him and slammed him against a fence a "couple of times." The complainant advised Sgt. Jones what happened and asked for his name and for Officer Carter's name. The complainant said Sgt. Jones did not comply with his request and asked him to leave the property. The complainant was then arrested for "Trespassing after Warning" and "Disorderly Conduct." The charges were dismissed.

C. Allegations

- 1- That Officer Gregory Carter used excessive force against him when he grabbed him and slammed him against the fence and threatened to tase him.
- 2- That Sgt. Ernest Jones refused to provide him with his name and the name of Officer Carter.

D. Disposition of the Independent Review Panel

Allegation 1:

- 1) Officer Gregory Carter used excessive force against Mr. Tyler when he grabbed him and slammed him against the fence and threatened to tase him. – **INSUFFICIENT EVIDENCE TO SUPPORT OR REFUTE**

There were no visible injuries to Mr. Tyler's chest or torso that would indicate he was slammed against a fence several times. The only injury Mr. Tyler showed to MDPD Internal Affairs was a small bruise to his left arm.

Officer Carter denied slamming Mr. Tyler against the fence several times. There were no independent witnesses to support or refute his claim.

In regards to the threat of being tased, Officer Carter denied making such a threat. Officer Carter is not certified or trained to carry a taser and was not issued one at the time of the incident. Mr. Tyler acknowledged at the Committee meeting that he did not actually see a taser on Officer Carter at the time of the incident.

Allegation 2:

- 2) Sgt. Ernest Jones refused to provide Mr. Tyler with his name and the name of Officer Carter. – **INSUFFICIENT EVIDENCE TO SUPPORT OR REFUTE**

It is the word of the complainant against that of Sgt. Jones. There were no independent witnesses to refute or support the allegation.

E. Other Findings:

- 1) There are discrepancies between the statements of Sgt. Jones and Officer Carter, and between Mr. Tyler and the two officers.

Officer Carter stated in his deposition that once he and Mr. Tyler jumped over the wall, Mr. Tyler ran off screaming into the dark. However, Sgt. Jones stated in his deposition that Officer Carter personally escorted Mr. Tyler to the front entrance and advised Sgt. Jones that he was being ejected. Mr. Tyler stated that Officer Carter remained 20 feet behind him and shadowed him until he got to the front entrance.

- 2) The Arrest Affidavit contains incorrect information.

Although probable cause to charge Mr. Tyler with Trespassing After Warning and Disorderly Conduct is documented in the Arrest Affidavit, the Affidavit contains incorrect information. According to the narrative, Mr. Tyler, in the presence of Sgt. Jones and Officer Lopez, "became disorderly by speaking loudly, causing a crowd to gather, and refusing to leave."

The same narrative by Officer Orlando Lopez stated incorrectly that the party promoter, Aixa Goodrich, asked for Mr. Tyler to be thrown out of the party. In Ms. Goodrich's statement to IA, she stated she did not recognize nor ask for Mr. Tyler to be thrown out of the party. Sgt. Jones stated in his deposition that the information in the Arrest Affidavit was correct. Ms. Goodrich's statement dictates otherwise.

- 3) The letters sent from Internal Affairs to the involved officers contained incorrect findings.

The letters stated the allegations were “Exonerated,” when in fact the MDPD Disposition Panel found that the allegations were “Not Sustained.” “Exonerated” means that there was evidence to specifically refute the allegations while “Not Sustained” means that there was insufficient evidence to refute or support them. The letters conveyed the incorrect findings to the officers.

F. Observations to Promote Healthy Police/Citizen Interactions

The Arrest Affidavit is an official record that documents probable cause for arrest. When incorrect information is recorded and that information is confirmed to be correct by the supervising sergeant, public trust in officer credibility is compromised.

A police officer has the authority to order an individual to leave any property according to State Statute 810.09:

“A person who remains on any property as to which notice is given, either by actual communication to the offender or by posting, fencing or cultivation, commits the offense of trespass on property.”

The Statute authorizes *“any law enforcement officer whose department has received written authorization from the property owner, or his or her agent, to communicate an order to leave the property in the case of a threat to public safety or welfare.”*

The Independent Review Panel concluded the complaint on April 27, 2006.

Independent Review Panel

Committee Recommendation to the Panel

April 27, 2006

Complaint: A 2005.180

MDPD Case: IA 2004-0364

Complainant: Jeffrey Tyler

Accused Party: Miami-Dade Police Department (MDPD); Officer Gregory Carter, Sgt. Ernest Jones

Date Complaint Received: October 20, 2005

Materials Reviewed: Correspondence, IA Case 2004-0364, staff notes and committee notes

Committee: Michael R. Band, Esq.; Dr. Eduardo Diaz, Executive Director; Carol Boersma, Executive Assistant to the Director; Fernando L. Robreño, Conflict Resolution Specialist

Meeting Date: February 22, 2006

Present: From MDPD Professional Compliance Bureau; Sgt. Bill Richardson, Complaint Investigator; Jeffrey Tyler, Complainant (via telephone)

Complaint: Complainant stated that on October 30th, 2004 he attended a party at the Vizcaya Museum and Gardens. While at the party he witnessed two Miami-Dade Police Department officers, who he thought were security guards at the time, "throwing out" a young black man, who was apparently with the band. The complainant stated he intervened and asked the MDPD officers why they were throwing out the young black man. At that time, MDPD Officer Gregory Carter, grabbed him and slammed him against a fence a "couple of times." The complainant stated Officer Carter threatened to "tase" him if he did not jump the fence and leave the party. The complainant jumped the fence and went to the entrance to complain about the incident to a supervisor, Sgt. Ernest Jones. The complainant advised Sgt. Jones what happened and asked for his name and for Officer Carter's name. The complainant said Sgt. Jones did not comply with his request and asked him to leave the property. The complainant was then arrested for "Trespassing after Warning" and "Disorderly Conduct." The charges were dismissed.

Complainant alleged:

- 1- That Officer Gregory Carter used excessive force against him when he grabbed him and slammed him against the fence and threatened to tase him.
- 2- That Sgt. Ernest Jones refused to provide him with his name and the name of Officer Carter.

Department Response: MDPD IA 2004-0364

IA Investigator - Sgt. Bill Richardson

MDPD Disposition Panel – Chairperson Major Michael Trerotola, Major Glenn Theobald, Major Larry Buck

MDPD investigated Mr. Tyler's allegations that Officer Carter grabbed him and pushed him into an iron gate, and that Sgt. Jones refused to provide his name and badge number, along with Officer Carter's name and badge number.

The following is excerpted from the MDPD Disposition Panel memo dated July 25, 2005.

Allegation #1 – Officer Carter grabbed the complainant and pushed him into an iron fence. – “NOT SUSTAINED

There is nothing found in the case file that would support the complainant's allegation. No one witnessed such an event, and Officer Carter denies it happened. Additionally the complainant never complained of injury, and no sign of injury was noted on the complainant at the time of his arrest. It was not until three days later, when the complainant responded to the Professional Compliance Bureau to lodge his complaint, that he offered evidence of an injury, a small bruise located on the inside of his left bicep.

Allegation #2 – Sgt. Jones refused to provide the complainant his and Officer Carter's name and badge number. – “NOT SUSTAINED”

Sgt. Jones stated that not only did he verbally provide the complainant with his name, he also provided the complainant with his MDPD business card on which he wrote his badge number. Sgt. Jones denied that the complainant ever asked him for Officer Carter's name. There is nothing in this investigative case file that supports the complainant's allegation.

Summary of Other Statements

Officer Orlando Lopez (Robbery Bureau)

Officer Lopez stated he was working an off-regular-duty assignment at the Vizcaya Museum. He stated that at approximately 11:30 pm, he observed the complainant arguing with Sgt. Jones at the front entrance. He stated that the complainant had been ejected by Officer Carter and that Sgt. Jones was telling the complainant that he had to leave the premises. He stated that the

complainant refused to leave and when he continued to argue with Sgt. Jones, a large crowd gathered. Officer Lopez stated he arrested the complainant for "Disorderly Conduct," and "Trespass after Warning."

Statement of Sgt. Lynnise Jones-Curry (Airport District/Crime Analysis Unit)

Sgt. Jones-Curry stated she observed Officer Castillo and Officer Carter escorting a black male and a white male (later identified as the complainant) through the crowd toward the front entrance. She stated moments later she arrived at the front entrance and observed the complainant arguing with Sgt. Jones. She stated Sgt. Jones and Officer Lopez were attempting to calm the complainant and explain that he had to leave the property. Since they appeared to need no assistance she returned to the party.

Statement of Mr. David Trujillo (Employee Relations Representative, Vizcaya Museum)

Mr. Trujillo stated that at approximately 11:00 pm, he observed Officer Carter and the complainant walking together hastily toward the front entrance of the grounds. He stated he lost sight of Officer Carter as he and the complainant made their way through the crowd. Mr. Trujillo stated he did not witness a disturbance involving the complainant, nor did he know why the complainant was ejected.

Statement of Aixa Goodrich (Party Promoter)

Ms. Goodrich stated that she was trying to go on stage at approximately 11:00 pm when an unidentified black male began causing a disturbance by blocking the stairway and refusing her access onto the stage. She stated she requested MDPD officers working off-duty at the event to respond to her location. Ms. Goodrich stated that moments later Lt. Jorge Guerra, and several other officers arrived and ejected the black male. She added that she was aware of other unidentified individuals causing a disturbance at the party; however, she could not recall if the complainant was one of them.

Statement Officer Roger Castillo (Warrants Bureau)

Officer Castillo was shown photographs of the complainant and asked if the complainant was also involved in the incident with the black male. Officer Castillo stated he did not observe the complainant, nor did he have any knowledge of the complainant being at the party.

Statement of Lt. Jorge Guerra (Police Operations Bureau/Uniform Patrol)

Lt. Guerra stated he met with Ms. Goodrich who explained that the unidentified black male was refusing to allow her onto the stage. He stated Officers Castillo and Carter then escorted the black male to the front entrance. After reviewing photographs of the complainant, Lt. Guerra stated he did not observe the complainant on the scene, nor was he aware of any of the complainant's allegations.

Committee Remarks

The Committee Meeting was held via telephone because Mr. Tyler lives in Los Angeles, CA.

Mr. Tyler's Concerns

Mr. Tyler stated that he felt Officer Carter's actions were completely unprovoked. He also stated that the MDPD wrote a "false" police report since he was never asked to leave by the party promoter. The Arrest Affidavit states, Mr. Tyler "was observed disrupting other party goers and was asked to leave several times by the party promoter."

Mr. Tyler stated that Officer Carter was huge and built like a "pit bull." Sgt. Richardson confirmed that Officer Carter was in "good shape."

Mr. Tyler felt that Officer Carter should be tested for steroids. He stated he felt that steroids could have led to Officer Carter's losing his cool.

Mr. Tyler stated that the officers at the scene never took a statement from the young black male who was being thrown out of the party, even though this man was standing around for about 30 minutes after he (Tyler) was arrested.

Mr. Tyler's Injuries

Mr. Tyler stated he was grabbed by Officer Carter and slammed against an iron fence several times. He further stated that the next day he went to Cedars Medical Center for treatment and was told he did not have any injuries to his ribs. Mr. Band asked Mr. Tyler if there were any visible injuries on his chest. Mr. Tyler stated there were not.

Mr. Band questioned how there were no visible torso or chest injuries on Mr. Tyler even though he stated he was slammed against a fence several times. The only injury documented in the IA file is a small bruise on the inside of his left bicep. Mr. Tyler stated the injury was caused by Officer Carter grabbing him.

MDPD Arrest Affidavit

Dr. Diaz brought to the attention of the Committee the Arrest Affidavit created by Officer Orlando Lopez, the arresting officer. Dr. Diaz stated that in the deposition of Sgt. Jones, he was asked if the information written on the A-form was correct and Sgt. Jones stated yes.

Ms. Boersma stated that the party promoter, Ms. Aixa Goodrich, was mentioned on the A-form as complaining about Mr. Tyler and asking for him to be ejected. However, in her statement, she stated she had never seen the complainant before and she had asked for the young black male to be ejected.

Dr. Diaz advised the Committee that the information establishing probable cause for Mr. Tyler's arrest on the A-form was based in part on the incident that happened with the young black male, not Mr. Tyler.

Sgt. Richardson stated that information on the A-form was probably inaccurate due to the confusion at the time. Officer Lopez was the third officer to deal with Mr. Tyler and he did not have first hand knowledge of the original confrontation, thus the A-form was a third person account. Therefore when the information was passed down about the young black male being ejected, he thought they were referring to Mr. Tyler.

Contradictions in Officer Carter's and Sgt. Jones' Statements

Ms. Boersma stated that Officer Carter said that once he and Mr. Tyler jumped the fence, Mr. Tyler ran off into the darkness and he went back to his post. However, Sgt. Jones stated that Officer Carter escorted Mr. Tyler directly to him and stated he was being ejected.

Mr. Tyler stated that once he and Officer Carter jumped the fence, he walked over to the front entrance to speak to a supervisor. He stated Officer Carter was shadowing him about 20 feet behind until he confronted Sgt. Jones.

IA Letters and Disposition Memo

Dr. Diaz stated that "Not Sustained" meant that the MDPD Disposition Panel found insufficient evidence to support or refute the allegations, not that the officers involved were cleared of all wrongdoing.

Dr. Diaz pointed out that the letters sent from the Professional Compliance Bureau to the involved officers stated that they were "Exonerated," meaning that there was evidence to clear the officers of any wrongdoing.

Sgt. Richardson stated that it was a clerical error and that the officers were not "Exonerated."

Mr. Tyler's Drink

Mr. Band asked Mr. Tyler how many drinks he had and if he was intoxicated on the night in question. Mr. Tyler stated he had only "two cosmopolitans" and that he was not intoxicated.

Mr. Tyler stated that when Officer Carter grabbed him he spilled some of his drink onto Officer Carter.

Dr. Diaz stated that in Officer Carter's statement, he claimed that Mr. Tyler was heavily intoxicated and flailing his arms causing Mr. Tyler's drink to spill over his uniform. Dr. Diaz stated that according to Officer Carter's statement, once Mr. Tyler spilled his drink onto his uniform, that is when Officer Carter decided to have him ejected.

Mr. Tyler's Arrest Record

Mr. Band told Mr. Tyler that even though the charges against him were dismissed, his record will still show that he was arrested. Mr. Band advised Mr. Tyler that in the State of Florida he could have his records sealed so that he could legally say he has not been arrested.

Committee Findings:

A. Regarding the allegation:

- 1) Officer Gregory Carter used excessive force against Mr. Tyler when he grabbed him and slammed him against the fence and threatened to tase him. – **NOT SUSTAINED**

There were no visible injuries to Mr. Tyler's chest or torso that would indicate he was slammed against a fence several times. The only injury Mr. Tyler showed to MDPD Internal Affairs was a small bruise to his left arm.

Officer Carter denied slamming Mr. Tyler against the fence several times. There were no independent witnesses to support or refute his claim.

In regards to the threat of being tased, Officer Carter denied making such a threat. Officer Carter is not certified or trained to carry a taser and was not issued one at the time of the incident. Mr. Tyler acknowledged at the Committee meeting that he did not actually see a taser on Officer Carter at the time of the incident.

- 2) Sgt. Ernest Jones refused to provide Mr. Tyler with his name and the name of Officer Carter. – **NOT SUSTAINED**

It is the word of the complainant against that of Sgt. Jones. There were no independent witnesses to refute or support the allegation.

B. Other Findings:

- 1) There are discrepancies between the statements of Sgt. Jones and Officer Carter, and between Mr. Tyler and the two officers.

Officer Carter stated in his deposition that once he and Mr. Tyler jumped over the wall, Mr. Taylor ran off screaming into the dark. However, Sgt. Jones stated in his deposition that Officer Carter personally escorted Mr. Tyler to the front entrance and advised Sgt. Jones that he was being ejected. Mr. Tyler stated that Officer Carter remained 20 feet behind him and shadowed him until he got to the front entrance.

- 2) The Arrest Affidavit contains inaccurate information.

Although probable cause to charge Mr. Tyler with Trespassing After Warning and Disorderly Conduct was documented in the Arrest Affidavit, the Affidavit contains inaccurate information. According to the narrative, Mr. Tyler, in the presence of Sgt. Jones and Officer Lopez, "became disorderly by speaking loudly, causing a crowd to gather, and refusing to leave."

The same narrative by Officer Orlando Lopez stated incorrectly that the party promoter, Aixa Goodrich, asked for Mr. Tyler to be thrown out of the party. In Ms. Goodrich's statement to IA, she stated she did not recognize nor ask for Mr. Tyler to be thrown out of the party. Sgt. Jones stated in his deposition that the information in the Arrest Affidavit was correct. Ms. Goodrich's statement dictates otherwise.

- 3) The letters sent from Internal Affairs to the involved officers contained inaccurate findings.

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Observations to Promote Constructive Police/Citizen Interactions

The Arrest Affidavit is an official record that documents probable cause for arrest. When inaccurate information is recorded and that information is confirmed to be correct by the supervising sergeant, public trust in officer credibility is compromised.

A police officer has the authority to order an individual to leave any property according to State Statute 810.09:

"A person who remains on any property as to which notice is given, either by actual communication to the offender or by posting, fencing or cultivation, commits the offense of trespass on property."

The Statute authorizes *"any law enforcement officer whose department has received written authorization from the property owner, or his or her agent, to communicate an order to leave the property in the case of a threat to public safety or welfare."*

Recommendations:

1. That MDPD prepare a Record of Counseling for Officer Orlando Lopez and Sgt. Ernest Jones for providing inaccurate information on the Arrest Affidavit.
2. That MDPD Professional Compliance Bureau resend the letters to the involved officers with the correct findings.
3. That the Panel adopt the Committee Findings and Recommendations, and conclude the complaint.